

## Passage of Anti-Trafficking Bill in Indonesia – April 19, 2007

### ICMCs counter-trafficking team's efforts and role to obtain bill passage

On April 19 2007, the President of Indonesia, Susilo Bambang Yudhoyono put his signature on the Suppression of the Criminal Act of Trafficking in Persons Law bringing to conclusion a protracted passage of the act on the parliament. The new Indonesian counter-trafficking law defines the act of human trafficking in consonance with the Palermo Protocol bringing much needed clarity to the trafficking discourse in Indonesia.

Indonesia is primarily a source country for human trafficking, though there are reports of trafficking of women of foreign origin for prostitution to some major urban centers of Indonesia. However, because of widespread poverty and unemployment, and low perceived worth of women and girls in the traditional Indonesian society, Indonesia emerged as a large source of women domestic workers for a number of relatively prosperous countries of middle-eastern and east Asia. Because of corrupt recruitment and placement practices, and preference of a large multitude of aspiring migrants to cross borders without appropriate documents, migration for work became a major playing field for traffickers. Furthermore, the presence of a fairly old and established sex work sector across the length and breadth of Indonesia resulted in considerable trafficking of women and girls within national borders. Endemic poverty and high costs of migration both within and across the borders lead to many migrants to be bonded by costs converted to debts. In fact, debt bondage happens to be the major instrument used to traffic women, men, girls and boys from Indonesia. The absence of a comprehensive law to deal with trafficking was among a number of reasons why trafficking thrived in Indonesia.

ICMC's has had continued involvement in trafficking issues in South East Asia. Since October 2001, ICMC, in partnership with the American Center for International Labour Solidarity (Solidarity Center), has been managing a substantive counter-trafficking project in Indonesia supported by the US Government. Working in close collaboration with the Ministry of Women's Empowerment, some of the important tasks of the project have been:

- Reviewing legislation existing in Indonesia, at the time of signing the Palermo Protocol, that could be used to prosecute traffickers;
- Providing technical assistance to the Ministry of Women's Empowerment in developing a national plan of action to suppress trafficking in women and children;
- Providing technical assistance for the development of a counter-trafficking legislation; and
- Assisting the Government of Indonesia in developing standards for return and reintegration of survivors of trafficking.

The programme entered a new phase in March 2007 during which ICMC and Solidarity Center will be:

- Assisting the Government of Indonesia to create the implementing regulations for the recently passed counter-trafficking law, as well as to disseminate the contents of the law among government and non-government staff at local levels in selected districts;
- Building capacities of local governments, and mass-based organisations to spread awareness and identify advocacy issues; and
- Building the capacities of the Ministry of Women's Empowerment and district / municipality level taskforces to build a reliable counter-trafficking database for Indonesia.

The current phase will continue until September 2009.

**In Indonesia, ICMC has been a member of the National Task Force on Suppressing the Trafficking of Women and Children since its inception.** The task force is about to be reconvened, with a larger mandate than before, by a Presidential decree. ICMC in South East Asia is now exploring possibilities of starting bilateral projects with countries like Malaysia and Taiwan which are the destinations for large numbers of migrant workers – mostly women, from Indonesia. Though the number of recorded cases of trafficking in Indonesia is not very high<sup>1</sup>, anecdotal accounts abound about the extent of trafficking from Indonesia, mostly of women, to other countries.

ICMC's competences in combating trafficking are clustered around three major areas – namely, **building capacities in the state and non-state players; providing witness protection and other services to survivors of trafficking; and advocacy.** Some typical examples of building capacities in the state and non-state players are: providing support to national and local governments in drafting and implementing counter-trafficking legislation; police and prosecutor training; encouraging formation of counter-trafficking taskforces at local levels to strengthen law enforcement and improve quality of victim service; and strengthening capacity of governments and NGOs for recovery, return, and reintegration of survivors of trafficking.

Typical examples of providing services to trafficking survivors include: identifying trafficked persons through referrals and providing them with secure shelters; providing medical check up on admission, sustained medical and psycho-social assistance during stay in the shelter; legal advise and support; livelihood / sustenance assistance; meeting costs of repatriation and referral to other support organisations in places of destination; and above all, empowering them sufficiently to be able to decide what they wanted to do in terms of wanting to prosecute their traffickers, claim compensation, and be returned to their countries of origin.

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<sup>1</sup> Sugiarti, Keri Lasmi (Ed.). *When They were Sold: Trafficking of Women and Girls in 15 Provinces of Indonesia*, ICMC and Solidarity Center, Jakarta 2006. Table 4.5 on page 371 shows that only 532 cases of trafficking was recorded by Indonesian police during the five years following Indonesia becoming a signatory to the Palermo Protocol. Out of the total of 532 cases, 317 were actually recommended for prosecution suggesting that almost 40% of the cases were either frivolous, or not properly investigated.

Major advocacy competences are in the areas of lobbying for policy changes to facilitate safe migration, and improve access to rights of trafficked persons; and identifying, gathering and disseminating information and monitoring important trafficking related issues such as debt bondage, spurious employment contracts, and roles played by labour export agencies and labour placement agencies in reducing the status of migrant workers to trafficking like situations.

**Some of the noteworthy deterrent features of the bill are:**

- The law punishes any act that leads to exploitation. This is aimed to prevent perpetrators from seeking immunity behind pretexts of labor export, exchange of cultural ambassadors, or child adoption (Articles 1 and 2).
- The law raises the upper limit of punishment from a maximum of six years in jail to 15 years, and adds the provision of a fine of up to 600,000,000 rupiahs (USD 65,000) over and above the jail sentence. In case the trafficked person is a child, or trafficking results in a person's death, the punishment is doubled (Articles 2 to 6, and 17).
- If perpetrators are legal entities, then those could be fined up to three times of the maximum limit otherwise specified, their management impeached, their business license revoked, proceeds derived from trafficking confiscated, and the members of the Board prohibited from establishing another entity in the same line of business (Article 15).
- If perpetrators are government administrators, in addition to fines and jail sentence, they may be dishonorably discharged (Article 9).

Some of the child friendly features of the law are detailed in Articles 39 and 40. These include court sessions closed to public, right of accompaniment of child survivors, examination of child survivors in the absence of the defendant, and their examination outside the courtroom.

The new law strengthens protection of witnesses and survivors. One of the important features of the law is that every person or entity found guilty of trafficking will be required by law to pay for material and non-material restitution of the survivors of trafficking (Article 48). In addition, Article 51 gives survivors the right to receive recovery and reintegration services, whereas Article 18 stipulates that criminal charges may not be brought against those established to be survivors of trafficking. Articles 35, 36, and 47 further protect the rights of survivors to receive information, to be accompanied by legal counsel, and the physical entities of those who are ready to testify in the court. Section 51 of the law also directs relevant government departments to provide appropriate budgetary resources for medical and social care of survivors of trafficking.

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